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No. 693

SUPREME COURT OF THE UNITED STATES

CHARLES OLIVER WILLIAMSON,
Appellant.

VERSUS

UNITED STATES OF AMERICA,
Appellee.

WRIT OF CERTIORARI from The United States Circuit Court of Appeals for the Fifth Circuit

WESLEY ASINOF
Attorney for Appellant

INDEX

	Page No.
Petition for Writ of Certiorari	2
Affidavit of Petitioner	5
Writ of Certiorari	6
Judgment of U. S. Circuit Court of Appeals	7
Order Denying Rehearing	7
Opinion of The U. S. Circuit Court of Appeals	8
Argument and Citation of Authority	14
Certificate of Service	17
Jencks v United States 353 U. S. Reports 657	15
McGinniss, et al. v United States 256 Federal 621	15
Mark Yick Hee, et al. v United States 223 Federal 782	16

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Attorney for Appellant

TO THE SUPREME COURT OF THE UNITED STATES

The petition of CHARLES OLIVER WILLIAMSON shows that on December 1, 1959 the United States Circuit Court of Appeals for the Fifth Circuit, affirmed a judgment of the United States District Court For The Northern District Of Georgia, Atlanta Division, wherein petitioner was convicted of nineteen (19) counts of possession and transporting in interstate commerce, stolen automobiles. That on January 12, 1960, the said Circuit Court of Appeals denied petitioners motion for re-hearing, without opinion. Said case was No. 17652 of The United States Circuit Court of Appeals For The Fifth Circuit, CHARLES OLIVER WILLIAMSON, Appellant, vs UNITED STATES OF AMERICA, Appellee. That said matter was tried before Judges Elbert P. Tuttle, Rives T. Wisdom and Joseph C. Hutcheson, Jr.

That judgment was adverse to your petitioner, and he is dissatisfied herewith; and now, within thirty days from the final determination of said cause, petitioner having complied with the requirements of law in such cases, presents this his petition for writ of certiorari. Petitioner avers that the Trial Court committed the following errors on the trial of said case.

1.

The admission of Government's Exhibit #3 over objection of defendant as appears on Page 234 of the Record.

2.

The admission of Government's Exhibit #4 over objection of defendent as appears on Page 189 of the Record.

3.

The admission of Government's Exhibit #5 over objection of defendant as appears on Page 189 of the Record.

4.

The admission of Government's Exhibit #8 over objection of the defendant as appears on Page 141 of the Record.

5.

The admisison of Government's Exhibit #10 over objection of defendant as appears on Page 141 of the Record.

6.

The admission of Government's Exhibit #11 over objection of defendant as appears on Page 393 of the Record.

7.

The admission of Government's Exhibit #12 over objection of defendant as appears on page 141 of the Record.

8.

The admission of Government's Exhibit #13 over objection of defendant as appears on Page 312 of the Record.

9.

The admision of Government's Exhibit #14 over objection of defendant as appears on Page 338 of the Record.

10.

The admisison of Government's Exhibit #17 over objection of defendant as appears on Page 349 of the Record.

11.

The admission of Government's Exhibit #29 over objection of defendant as appears on Page 98 of the Record.

12.

The admission of Government's Exhibit #32 over objection of defendant as appears on Page 99 of the Record.

13.

The admisison of Government's Exhibit #33 over objection of defendant as appears on Page 99 of the Record.

14.

The admission of Government's Exhibit #44 over objection of defendant as appears on Page 228 of the Record.

15.

Refusal of the Court to permit Special Agent Hugh Smith to answer a question propounded by defense counsel as appears on Pages 331, 332, and 333.

16.

That the evidence will not support the verdict and that the verdict is contrary to the weight of the evidence.

17.

The overruling of defense counsel's motion for a judgment of acquittal on the grounds that certain F.B.I. documents had not been furnished defendant as appears in the Record, beginning on Page 483.

Petitioner shows that said alleged errors were not corrected by the United States Circuit Court of Appeals For The Fifth Circuit as they affirmed the judgment of the Trial Court.

Wherefore, in order that said errors may be reviewed and corrected, petitioner prays that a writ of certiorari may issue,

directed to Judges Elbert P. Tuttle, Rives T. Wisdom and Joseph C. Hutcheson, Jr., of the United States Circuit Court of Appeals For the Fifth Circuit, in terms of the law, requiring them to certify and send up all the proceedings in said case to the next term of 1960, of the Supreme Court of The United States, that such judgment may be rendered therein as may seem in accordance with law. And your petitioner will ever pray.

GEORGIA, FULTON COUNTY.

I, Charles Oliver Williamson do solemnly swear that this petition for certiorari is not filed in the case for the purpose of delay only, and I verily believe I have good cause for certiorari; and that the facts stated in the foregoing petition, so far as they come within my own knowledge are true, and so far as they are derived from knowledge of others, I believe them to be true.

.....

Charles Oliver Williamson

Sworn and subscribed to before

me, this.....day of.....1960.

DISTRICT OF COLUMBIA.

To Judge Elbert P. Tuttle, Judge Rives T. Wisdom, and Judge Joseph C. Hutcheson, Jr. of the United States Circuit Court of Appeals For The Fifth Circuit.

Whereas Charles Oliver Williamson alleges, by his petition for Certiorari, that on January 12, 1960, judgment was rendered against him in the case of Charles Oliver Williamson, Appellant, Vs United States Of America, Appelle, Case No. 17652; with which judgment your petitioner is dissatisfied.

Whereas Charles Oliver Williamson has complied with the requirements of the law in cases of application for certiorari.

Now, therefore you are hereby notified and required to certify and send up to the Supreme Court Of The United States, under your hand and seal, all facts, proceedings, and record in this case, in your Court aforesaid.

Witness The Honorable Hugo Black, Justice of said Court.

JUDGMENT.

Extract from the Minutes of December 4, 1959

CHARLES OLIVER WILLIAMSON,

No. 17652. **versus**

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel.

ON CONSULTATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

ORDER DENYING REHEARING.

Extract from the Minutes of January 12, 1960.

CHARLES OLIVER WILLIAMSON,

No. 17652. **versus**

UNITED STATES OF AMERICA.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17652

CHARLES OLIVER WILLIAMSON,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Georgia.

(December 4, 1959.)

Before HUTCHESON, TUTTLE and WISDOM, Circuit Judges.

WISDOM, Circuit Judge: This is an appeal from a judgment of conviction on an indictment charging conspiracy to violate, and substantive violation of the Dyer Act, 18 USCA 2312 2313. The appellant, Charles Oliver Williamson, was charged on twenty-two counts, on two of which he was acquitted. Nine stolen cars were involved. Three alleged

accomplices testified against Williamson. The trial was lengthy, lasting four days. Appellant was sentenced to a total of eight years in the custody of the Attorney General, four years on the conspiracy count and four years on each of the eighteen substantive counts, the sentences on the substantive counts to run concurrently after the sentence on the conspiracy count.

Five grounds of error are alleged, each of which the Court finds to be without merit.

1. Appellant contends that the trial court erred in admitting copies of automobile registration records from Tennessee, Georgia, North Carolina, and Texas when the government made no showing that the original documents were not available. The largest group of these records were produced by their custodian, Miss Inez Kinney of the Motor Vehicle License Unit, State of Georgia Revenue Department. She testified that the originals were attached to the photostatic copies. Counsel for the United States stated that the originals were available for inspection and comparison by the defendant's counsel; that he wished to substitute the copies for the originals, which must be retained by the State of Georgia. The trial judge then inquired as to whether there was any objection to that procedure. Defense counsel stated that he had no objection. One registration record was offered from Tennessee. As to this record, Mr. Frank Fleming, Supervisor of Titles for Automobiles for Tennessee, testified that the document in question was an official document made in the ordinary course of business of the State of Tennessee, and was the only official record of the registration of the automobile in question; Tennessee retaining the photostat for the official files and delivering the original document to the car owner. The North Carolina record was a photostat

taken from permanent title records kept on microfilm. Mr. A. M. Gilbert, Director of the License and Theft Bureau of Motor Vehicles and the custodian of the North Carolina records, stated that it was prepared from microfilm in his presence. There were two Texas automobile registrations offered in evidence. Mr. Bart Couch, Chief of Titles, Motor Vehicles, Texas Highway Department, the custodian, testified that Texas has no originals from which the photostats were made; that in Texas the original documents are destroyed and the microfilm copies made under his supervision are considered the official records of the State of Texas. Defense counsel did not even cross-examine Mr. Couch.

In these circumstances the government fully complied with the best evidence rule. Each exhibit was properly identified and there was no possibility of error in the method of identification. All of the documents would have been admissible under the Business Records Act 28 USCA 1732, without further identification. The defense made no attempt to dispute the authenticity of the photostats, did not move the court to direct that the original microfilm be produced for comparison (where available), and makes no attempt, even now, to contend that the title registrations were not material or relevant. Not one of the exhibits was tendered or admitted in evidence until the owner of the car, or the person in whom the car was registered, identified it personally, in most cases by signature. In these circumstances the appellant's objection borders on the frivolous.

2. Appellant contends that the trial court erred on admitting in evidence a check from the Weekley Motor Company and certain other records kept by that company. The check and records are original records made in the usual course of business and are unquestionably admissible.

3. The appellant contends that the trial court erred in refusing to require an FBI agent to reveal the exact place on a particular stolen automobile where he found the confidential serial number. He contends that this deprived him of his right of cross-examination and that therefore the Government must make an election between divulging the place of the confidential serial number and dismissing the indictment. In the first place the court agreed in part with the appellant's contention. While not requiring the witness to reveal the exact location, the court did direct the agent to "give in general terms where he found the confidential number." The witness then testified that the confidential number "was on the frame of the automobile" and that "there is a book that gives the location of these numbers." The defense counsel made no further objections and proceeded with the cross-examination with very few questions addressed to the subject of the location of the confidential number. At no time has the appellant disputed the fact that the car in question was the car alleged to have been stolen by the defendant. Further, there is nothing to indicate that the location of the serial number would be material or that by inspection and discovery of the number or the location the testimony of the agent might be impeached. Confining ourselves closely to the facts of this case, we are of the opinion that no prejudice resulted to the appellant through the motion of the trial court. *United States v. McCurry*, D.C. Pa., 1956, 146 F.Supp. 109, at page 111, affirmed 248 F.2d 116; *United States v. Wheeler*, 7 Cir., 1955, 219 F.2d 773, at page 775, cert. den. 349 U.S. 944.

4. The appellant contends that the trial court erred in refusing to dismiss the indictment because of the failure of the government to give the defense a written summary of an oral interview with a government witness. FBI agent

John Cook interviewed briefly Glenn McGiboney, who bought one of the stolen cars from the appellant. The agent did not take a written statement from McGiboney but he did make a written summary of the oral interview. Both the agent and Mr. McGiboney testified but the agent, Cook, did not testify to anything about an interview with McGibony on his direct examination. In fact, Cook did not mention McGiboney's name on direct examination. The Jenks statute, 18 USCA 3500, requires the government to produce only statements relating "to the subject matter as to which the witness has testified," *Rosenberg v. United States*, 1959, 360 U.S. 367, 79 S.Ct. 1231, 3 L.Ed.2d 1304: *DeFreese v. United States*, 5 Cir., 1959, F.2d. After the government rested its case and the defense put on its case, counsel for the appellant moved for a judgment of acquittal. He advised the court that "to the best of my recollection the court instructed the District Attorney to secure the document". Counsel for the government stated for the record, that "counsel for the defendant did not ask for it in any manner or shape" although he had talked with him in the hall several times, chatted with him, and seen him at recesses. The record shows no clear request for the statement and no clear ruling by the court. In any event, however, government counsel stated that he had the report in court and suggested that FBI agent Cook be recalled. The court stated that he did not recall the occurrence as it was related by counsel. Nevertheless the trial judge offered to reopen the case and give the appellant "the benefit of the statement and if you wish to examine those witnesses about it I will permit you to do so now". In these circumstances there is no merit to the alleged objection.

5. Finally, appellant argues that the evidence was not sufficient to support the verdict. A careful study of the

record shows that the evidence against appellant is overwhelming. The direct testimony alone points clearly to the appellant as the leader in an active interstate ring of car thieves.

The judgment is

AFFIRMED.

A true copy

Test:

EDWARD W. WADSWORTH

Clerk, U. S. Court of Appeals, Fifth Circuit

New Orleans, Louisiana

Argument and Citation of Authority

In considering the special errors, which have been alleged in Part One, it appears that the same abstract principle of Law applies to United States' Exhibit Numbers 4, 5, 8, 10, 11, 12, 13 and 14 and 17 in that: MRS. KENNY testified that the records were not made in her office, but were records made in the various Tax Commissioner's offices throughout the State and that the documents she proported to identify were copies sent to her office. The Law is fundamental concerning secondary evidence in that: it is not admissable until there is a showing that the original document is not available. There was no showing in this case that the original document was not available; consequently, the exhibits herein mentioned should have been excluded from evidence.

As to United States Exhibit #3, it was shown that the exhibit was a photostat copy with no showing that it was an exact reproduction of the original document and with no showing that the original was not available for introduction into evidence. The same theory of Law applies here that applies in the previous paragraph and it is so fundamental that there is no necessity for authority.

United States Exhibits Numbers 29, 32, and 33 are photostat copies. It is testified that they were made with microfilm without establishing that the microfilm was an exact reproduction of the original document. It was not established that the original document was not available for presentation in evidence. Mr. Gilbert's testimony as to Exhibit #29 appears on Page 64 of the Record. Mr. Couch's Testimony as to Exhibit Numbers 32 and 33 appears on Pages 76 and 77 of the Record. United States' Exhibit #44 consists of a

photostat copy of a record without first being shown that the original was not available or that the photostat was an exact reproduction of the original.

Defendant contends that he has been deprived of his right of cross-examination and further deprived of the right to impeach a witness when the Court instructed Special Agent Hugh Smith not to divulge the place on the automobile where the number was found. We feel that this is an inherent right and the Government must make an election as to divulge the place of the number or dismiss the indictment. There is no showing that the revealing of this number would jeopardize the security of the Country or was against public policy and we feel that the principles of Law as set out in the case of Jencks v. United States, appearing in 353 U. S. Reports Page 657 is applicable. This theory of Law will be dealt with in greater detail later in this brief.

When an accomplice or co-conspirator is used to establish the conspiracy, his testimony should be clear, unequivocal and uncontradicted. If the accomplice should contradict himself or not be sure, the evidence will not support the verdict. This principle of Law was set out in *McGinnis, et al v. United States*, 256 Federal 621:

> "The unsupported testimony of an accomplice who contradicts himself and was discredited by his own testimony, held to present no substantial evidence that defendant conspired with him to violate Criminal Code Sect. 37, Comp. St. Sect. 10201 by forging a document which should admit the prosecuting witness into the U. S. Military Academy without taking a mental examination, and a motion to direct an acquittal should have been granted."

There was no evidence in this case that the defendant conspired with JUANITA WILLIAMS. The only evidence of a conspiracy came from Lovett and Giles and only a cursory examination of their testimony will reflect contradiction and uncertainty. In fact, defendant's Exhibit #1 contradicts Lovett in the exact language of the indictment. While Giles had told versions of the story other than what he testified to and further testified that he would like to keep from going to jail.

It is the practice in this court not to consider the sufficiency of the evidence unless a motion for judgment of Acquittal had been made in the lower Court; however, in *Mark Yick Hee, et al v. United States*, 223 Federal 732, it is stated:

> "It is the general rule that appellate courts will not consider the sufficiency of evidence to sustain a verdict, in the absence of a request after the close of the evidence for a peremptory instruction, but in Criminal Cases the Courts of the United States, in the exercise of a sound discertion, may take notice of so grave an error as a conviction without evidence to support it, even though counsel failed at the trail to properly raise the question."

Appellant shows that Lovett's testimony on the stand is in direct conflict with defendant's Exhibit #1 and is inconsistent with the testimony of Juanita Williams. It is shown on the contrary that defendant was never in possession of the Robert Wrinkle car set out in Counts 4, 5, and 6 of the indictment. Even Lovett testified that defendant was not the party that brought the automobile to Greensboro as set out in Count 6 of the indictment. At one point in Lovett's testimony, he states that the statement he signed as defendant's Exhibit #1 was true and correct and on the other hand testi-

fied to the contrary. It was apparent that Giles' testimony was predicated on a matter of convenience and not on the truth. In fact, on defense counsel's cross-examination of Special Agent JOHN REYNOLDS the question was asked 'Have you found anything the defendant has told you to be untrue?' and his response was in the negative. It is submitted that Soto's identification of the defendant to Pina was so far incorrect that it could not have possibly been the same party. Thus it is submitted that taking the evidence of all the Government's witnesses, a judgment of "not guilty" on all counts is demanded.

At the close of the case, defendant made a motion for judgment of Acquittal on the grounds that he was not furnished certain F.B.I. reports which appears on Page 483 of the record and that said motion was overruled. It is submitted that the Law in the Jencks case 353 U.S. Reports 657 is controlling wherein it is stated:

"(c) Petitioner is entitled to inspect the reports to decide whether to use them in his defense."

"(f) Criminal action must be dismissed when the Government, on the ground of privilege, elects not to comply with an order to produce, for the accused's inspection and for admission in evidence, relevant statements or reports in the possession of Government witnesses touching the subject matter of the testimony at the trial."

"(g) The burden is the Government's not to be shifted to the trial judge, to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of State

secrets and other confidential information in the Government's possession."

It is conceded that the Trial Judge granted leave for defense counsel to re-open his case to cross-examine Special Agent Cook. It is further conceded that Assistant U. S. District Attorney, J. ROBERT SPARKS, stated in his place that he had the document in his possession; however, the document was never tendered to defense counsel for the purpose of examination; consequently, further cross-examination of Special Agent Cook would probably have revealed no more than had already been revealed. Thus, it is contended that the Trial Judge committed reversible error in overruling defense's motion for judgment of Acquittal.

Respectfully Submitted,

Attorney for Petitioner,

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Attorney for Petitioner,

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CERTIFICATE

I hereby certify that I have served the United States Government with a copy of this Document by placing an exact copy in the hands of J. ROBERT SPARKS, Assistant U.S. District Attorney.

This the ..... day of February, 1960.

WESLEY ASINOF

Attorney for Appellant